HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1557 Health Insurance/Certified Surgical Assistants
SPONSOR(S): Ritter and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2830 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Services (Sub)		Rawlins	Collins
2) Health Care			
3) Health Access & Financing (Sub)			
4) Insurance			
5) Health Appropriations (Sub)			
6) Appropriations			

SUMMARY ANALYSIS

According to a recent Government Accounting Office (GAO) report, members of a wide range of health professions serve as assistants-at-surgery, including physicians, residents in training for licensure or board certification in a physician specialty, several different kinds of nurses, and members of several other health professions.

There is no widely accepted set of uniform requirements for experience and education that the health professionals who serve as assistants-at-surgery are required to meet. The health professions whose members provide assistant-at-surgery services have varying educational requirements. The certification programs developed by the various nonphysician health professional groups whose members assist at surgery differ. The General Accounting office of the United States found that there was insufficient information about the quality of care provided by assistants-at-surgery generally, or by a specific type of health professional, to assess the adequacy of the requirements for members of a particular profession to perform the role.

A primary surgeon may request that another provider assist with a surgical case. Depending on the procedure performed, and the qualifications and training of the assisting provider, these services may be separately billable to Medicare. Medicare will reimburse only licensed personnel as assistants at surgery. The Florida Medicaid program reimburses for licensed health practitioners that include physician assistants and registered nurse first assistants whom provide surgery assistance.

HB 1557 requires that any insurance policy, health care services plan, or other contract provides for payment for surgical first assisting benefits or services, the policy, plan, or contract is to be construed as providing for payment to a certified surgical assistant or to the employer of a certified surgical assistant who performs such services that are assigned by the supervising physician, osteopathic physician, or registered nurse. This requirement applies only if reimbursement for an assisting physician licensed under chapter 458 or chapter 459 would be covered and the certified surgical assistant who performs such services is used as a substitute. As used in this paragraph, the term "certified surgical assistant" means a person who is an unlicensed health care provider that is directly accountable to a physician licensed under chapter 458, or an osteopathic physician licensed under chapter 459, or, in the absence of a physician or osteopathic physician, a registered nurse licensed under chapter 464, and who is certified by the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants.

The bill provides for an effective date of July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[x]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

The bill broadens government authority by mandating that insurers pay for specific services, thus limiting the insurance companies' freedom in contractual negotiations.

B. EFFECT OF PROPOSED CHANGES:

RECENT ISSUES

According to a recent Government Accounting Office (GAO) report, members of a wide range of health professions serve as assistants-at-surgery, including physicians, residents in training for licensure or board certification in a physician specialty, several different kinds of nurses, and members of several other health professions. Hospitals employ residents, international medical graduates, and all the types of nonphysician health professionals who perform the role.

There is no widely accepted set of uniform requirements for experience and education that the health professionals who serve as assistants-at-surgery are required to meet. The health professions whose members provide assistant-at-surgery services have varying educational requirements. No state licenses all the health professionals who serve as assistants-at-surgery, and the health professional licenses that states do issue typically attest to the completion of broad-based health care education, rather than education or experience as an assistant. Furthermore, the certification programs developed by the various nonphysician health professional groups whose members assist at surgery differ. The General Accounting office of the United States found that there was insufficient information about the quality of care provided by assistants-at-surgery generally, or by a specific type of health professional, to assess the adequacy of the requirements for members of a particular profession to perform the role.

As identified in the GAO report, there are varying degrees of surgical assistants and the educational levels differ greatly depending on the degree of expertise needed in the operating room. As a comparison, this analysis will focus on two primary categories of assistants:

- ✓ Licensed Professional Assistants. This category includes physicians, physician assistants and registered nurses.
- ✓ Unlicensed Allied Health Professional. This category of individuals includes surgical technologist, surgical assistants, "scrubs," and surgical or operating room technicians.

HB 1557 pertains to the unlicensed allied health professional. The U.D. Department of Labor describes the allied health professional assisting in surgery as someone that assists in surgical operations under the supervision of surgeons, registered nurses, or other surgical personnel. Surgical assistants are members of operating room teams, which most commonly include surgeons, anesthesiologists, and circulating nurses. Before an operation, surgical assistants help prepare the operating room by setting up surgical instruments and equipment, sterile drapes, and sterile solutions. They assemble both sterile and nonsterile equipment, as well as adjust and check it to ensure it is working properly. They may get patients ready for surgery by washing, shaving, and disinfecting incision sites. They transport patients to the operating room, help position them on the operating table, and cover them with sterile surgical

"drapes." Assistants also observe patients' vital signs, check charts, and assist the surgical team with putting on sterile gowns and gloves.

During surgery, assistants may pass instruments and other sterile supplies to surgeons and surgeon assistants. They may hold retractors, cut sutures, and help count sponges, needles, supplies, and instruments. Surgical assistants help prepare, care for, and dispose of specimens taken for laboratory analysis and help apply dressings. Some operate sterilizers, lights, or suction machines, and help operate diagnostic equipment.

Median annual earnings of surgical assistants and technologists were $31,210 in 2002, according to the US Department of Labor. The middle 50 percent earned between $26,000 and $36,740. The lowest 10 percent earned less than $21,920, and the highest 10 percent earned more than $43,470. Median annual earnings of surgical technologists in 2002 were $33,790 in offices of physicians and $30,590 in general medical and surgical hospitals.

REIMBURSEMENT OF SURGICAL ASSISTANTS

MEDICARE

A primary surgeon may request that another provider assist with a surgical case. Depending on the procedure performed, and the qualifications and training of the assisting provider, these services may be separately billable to Medicare. Medicare will reimburse only licensed personnel as assistants at surgery. Since 1997, the number of assistant-at-surgery services performed by physicians and paid under the Medicare physician fee schedule has declined, while the number of such services performed by nonphysician health professionals eligible to receive payment under the physician fee schedule has increased.[1]

The personnel that qualify for Medicare reimbursement when performing as an assistant at surgery are a licensed physician, clinical nurse specialist (CNS), physician assistant (PA), and nurse practitioner (NP) when the primary surgeon requires an assistant and the surgical procedure meets Medicare's requirements. Medicare will not reimburse for surgical assistants such as registered nurse first assistants (RNFAs), orthopedic physician assistants (OPAs), licensed practical nurses (LPNs), certified surgical technologists (CSTs), or other licensed or nonlicensed personnel employed by the physician practice. Non-Medicare payers may reimburse for the RNFA, OPA, or CST assisting in surgery.

Services rendered by a licensed professional assistant at surgery are eligible for reimbursement only when national claims data indicate the procedure necessitated an assistant in at least 5% of the claims based on a national average. The Medicare Physician's Guide identifies those procedures that qualify for Medicare reimbursement for an assistant at surgery, as well as those that may be considered for payment if the physician supports the medical necessity of an assistant. The resource specifies that:

- ✓ Medicare will only reimburse if medical necessity of the assistant is documented.
- ✓ Medicare will not pay for an assistant; there is an assistant at surgery restriction.
- ✓ Medicare will reimburse for an assistant surgeon (MD, PA, NP, or CNS).

Under the specified circumstances that Medicare will reimburse for assistant-at-surgery, the reimbursement is not at the full level of that of a physician. The reimbursement rate depends on the level of education. A physician assisting receives 30-75 percent of the surgeons rate, a physician assistant receives about 16-25 percent of the physician fee.[2]

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[1] United States General Accounting Office, January 2004."*Medicare Payment Changes Are Needed for Assistants-at-Surgery*." GAO 04-97.

[2] See The American Academy of Physician Assistants' web page: http://www.aapa.org/gandp/3rdparty.html.

Registered Nurse First Assistants (RNFT) that assist in surgery do not receive Medicare reimbursement. There has been national effort in place since 1987 to achieve federal reimbursement. At the state level, nine states have state statutes or regulations that support the reimbursement of RNFAs, including Florida,[3] Georgia, Kentucky, Maine, Minnesota, Rhode Island, Texas, Washington, and West Virginia. It is important to note that RNFT must carry professional liability insurance. Key elements of a liability policy include the insuring agreement, conditions of the contract, and exclusionary clauses.

Although in certain circumstances Medicare will reimburse for surgery assistants, a recent GAO report identified three flaws in Medicare's policies for paying assistants-at-surgery that prevent the payment system from meeting the program's goals of making appropriate payment for medically necessary services by qualified providers.

- ✓ First, because Medicare pays for assistant-at-surgery services through both the hospital inpatient prospective payment system (PPS) and the physician fee schedule, and hospital payments for surgical care are not adjusted when an assistant receives payment under the physician fee schedule, Medicare may be paying too much for some hospital surgical care.
- ✓ Second, paying a health professional under the Medicare physician fee schedule to be an assistant-at-surgery, instead of including this payment in an all-inclusive payment, gives neither the hospital nor surgeon an incentive to use an assistant only when one is medically necessary.
- ✓ Third, the distinctions between those health professionals eligible for payment as an assistant-at-surgery under the physician fee schedule and those who are not eligible are not based on surgical education or experience as an assistant. Criteria for determining who should be paid as assistants-at-surgery under the physician fee schedule do not exist. However, hospitals are responsible under health and safety rules to provide quality care for their patients.

In summary, the GAO report suggests that the majority of surgical assistants are likely already employed by hospitals, where the inpatient PPS pays for their services. They state that consolidation of assistant payments into the hospital payment would give hospitals an incentive to use assistants only where medically necessary, and hospitals are already required to use assistants where necessary as part of their duty of care. The study asks Congress to consider the consolidation of all assistant-at-surgery payments into the hospital payment system rather than a separate fee schedule similar to the physician fee.

PRIVATE INSURANCE

It is important to understand the role private insurance companies play in the claims and reimbursement process. Private insurance companies are in business, not unlike General Motors or IBM, to make a profit. In fact, one of the major goals of even nonprofit insurers, such as some of the Blue Cross/Blue Shield companies, is to increase their cash reserves (the equivalent of profit to a nonprofit company).

An insurance company is required to live up to its legal, contractual obligations as stated in the policy document; that is, to provide an agreed-upon service for a given price (premium). Insurers are not necessarily in business to assure that everyone receives access to quality medical care. Nor are they in business to guarantee that all qualified health care practitioners are fairly and adequately compensated for their services. Health care practitioners often try to assign "moral obligations" [4] to insurance companies, but they are not obligated to accept them.

[3] See ss. 464.027, 409.908, and 627.419, F.S.

[4] LEGAL DEFINITION: MORAL OBLIGATION - A duty which one owes, and which he ought to perform, but which he is not legally bound to fulfill. These obligations are of two kinds 1st. Those founded on a natural right; as, the obligation to be charitable, which can never be enforced by law. 2d. Those which are supported by a good or valuable antecedent consideration; as, where a man owes a debt barred by the act of limitations, this cannot be recovered by law, though it subsists in morality and conscience; but if the debtor promise to pay it, the moral obligation is a sufficient consideration for the promise, and the creditor may maintain an action of assumpsit, to recover the money.

Generally, insurance plans state that they cover medically necessary services provided by doctors of medicine and osteopathy. Some plans do not get overly specific in terms of listing each type of health care practitioner that may provide services under the plan. By Florida law it is required that specific services and providers are covered under the health insurance plans that are issued in Florida. Florida statutes contain 51 mandates on health insurers and HMOs in Florida ensuring coverage to a wide range of medical services and providers, according to a 2001 study conducted by the Florida House of Representatives Insurance Committee. Florida passed a law in 1987 that requires a "systematic review" of mandated benefits before being adopted. However, 35 mandates have been approved since that time and most were approved without the cost analysis or review, according to the House Insurance study. At the time of this analysis it is not evident that a cost analysis of HB 1557 has been completed.

"CERTIFIED" SURGICAL ASSISTANTS

There are several professional organizations that "certify" surgical assistants: The Liaison Council on Certification of Surgical Technologist; The National Surgical Assistant Association; The American board of Surgical Assistants

The American Board of Surgical Assistants

The American Board of Surgical Assistants (ABSA), was founded in 1987, by Paul F. Weeks, as a national credentialing organization, for surgical assistants. The ABSA administers a national certification examination, for surgical assistants, covering all surgical disciplines and all areas of preoperative medicine. The examination evaluates candidate knowledge of surgical anatomy, procedures and techniques, diagnostic studies, emergency situations, OSHA regulations and general patient safety.

The National Surgical Assistant Association

The National Surgical Assistant Association started in 1979, when a group of Surgical Assistants banned together to form the Virginia Association of Surgical Assistants, and set up a job description and standards for practice. This group saw a need for S.A.'s and the need for education.

The Eastern Virginia Medical School then became the home for the S.A. program. With the help of the Department of Surgery at Norfolk General Hospital, they developed a Certification Exam. This group also conducted a survey across the country to find out just how many people were out there working in the capacity of a Surgical Assistant. They were amazed to find how many S.A.'s were going unrecognized for the job they performed. Reaching out across the United States, the membership grew and thus the Virginia Association of Surgical Assistants became the National Surgical Assistant Association in 1983.

Liaison Council on Certification of Surgical Technologist

The Liaison Council on Certification for the Surgical Technologist (LCC-ST) was established in 1974 as the certifying agency for surgical technologists. Separately incorporated in 1992, LCC-ST is solely responsible for all decisions regarding the eligibility for and granting, denial, renewal, maintenance, and revocation of LCC-ST certification of surgical technologists and first assistants. In 2001 the LCC-ST relocated its headquarters to Colorado Springs, Colorado.[5]

Current state law[6] specifies that any health insurance policy, health care services plan, or other contract provides for payment for surgical first assisting benefits or services, the policy, plan, or

[5] See The Liaison Council on Certification for the Surgical Technologist: http://www.lcc-st.org
[6] See s. 627.419, F.S.

contract is to be construed as providing for payment to a registered nurse first assistant or employers of a physician assistant or nurse first assistant who performs such services that are within the scope of a physician assistant's or a registered nurse first assistant's professional license. This provision applies only if reimbursement for an assisting physician, licensed under chapter 458 or chapter 459, would be covered and a physician assistant or a registered nurse first assistant who performs such services is used as a substitute. HB 1557 expands the requirement to include certified surgical assistants, which are unlicensed allied health providers that are certified by the American Board of Surgical Assistants, the National Surgical Assistant Association, or the Liaison Council on Certification of Surgical Technologist.

C. SECTION DIRECTORY:

Section 1. Amends s. 627.419, F.S., includes certified surgical assistants, as defined, within certain benefits or services payment provisions, and limits application.

Section 2. Provides for an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By excluding the reimbursement for certified surgical assistant in the “total” for operating room charges, this may contribute to an increase in the overall growth of health care cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES